

ORIGINAL
1983 FORM Rev. 01/2008

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 11 2015

at 12 o'clock and 55 min. P.M.
SUE BEITIA, CLERK

Ernest S. Silva III A300072

Name and Prisoner/Booking Number

Kauai Community Correctional Center

Place of Confinement

3-5351 Kuhio Hwy

Mailing Address

Lihue, HI 96766

City, State, Zip Code

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

Ernest Simon Silva III

(Full Name of Plaintiff)

Case No. CV 15 00172 LEK BMK

(To be supplied by the Clerk)

vs.

Johnathan Silva

Joey Kaneakahi

Dept of Public Safety

PRISONER CIVIL RIGHTS COMPLAINT

Just trial Demanded!

☒ Original Complaint

☐ First Amended Complaint

☐ Second Amended Complaint

Kauai Community Correctional Center

(Full Names of Defendants; DO NOT USE et al.)

A. JURISDICTION

1. Jurisdiction is invoked pursuant to:

a. ☒ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983

b. ☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)

c. ☐ Other: (Please Specify) _____

2. Plaintiff: Ernest Simon Silva III

Institution/city where violation occurred: Kauai Community Correctional Center Holding cell 3

3. First Defendant *: Johnathan Silva Correctional officer

This defendant is a citizen of (state and county) Hawaii Kauai,
and is employed as:

Correctional officer (Aco) at Kauai Community Correctional Center

(Position and Title)

(Institution)

This defendant is sued in his/her ___ individual ☒ official capacity (check one or both). Explain how

Mailed On

Date

entire document

to Prisoner

1983 FORM Rev. 01/2008

this defendant was acting under color of law:

Defendant Johnathan Silva is a Correctional Officer and works
for the Department of Public Safety at Kauai Community Corrections Center.

4. Second Defendant: Joey Kaneakua Correctional Officer.

This defendant is a citizen of (state and county) Hawaii
Kauai, and is employed as:

Corrections Officer (A.C.O.) at Kauai Community Corrections Center.
(Position and Title) (Institution)

This defendant is sued in his/her ___ individual ☒ official capacity (check one or both). Explain how this defendant was acting under color of law:

Defendant Joey Kaneakua is a Correctional Officer and works for the
Department of Public Safety at Kauai Community Corrections Center.

5. Third Defendant: Kauai Community Corrections Center. Dept. of Public Safety.

This defendant is a citizen of (state and county) Hawaii
Kauai, and is employed as:

Department of Public Safety at Kauai Community Corrections Center.
(Position and Title) (Institution)

This defendant is sued in his/her ___ individual ☒ official capacity (check one or both). Explain how this defendant was acting under color of law:

Defendant is a State Government Agency that is a Correctional
Center under the Department of Public Safety Kauai (K.C.C.C.)

(If you would like to name additional defendants, make a copy of this (blank) page and provide the necessary information.)

* A defendant may be named in an individual or official capacity, or both. To sue a defendant in their **individual capacity**, you must be able to state facts showing that the defendant was actually involved in violating your rights. A suit against a defendant in their **official capacity** is in reality a suit against the office or position the defendant holds. Only injunctive relief is available in an official capacity suit against a state official. This is because the **Eleventh Amendment** confers immunity upon the state or its officials against monetary damages resulting from federal court litigation.

"Color of law" refers to whether the person is a private party or an employee, official, or agent of a state, county, city, or the federal government. There can be no civil rights action under § 1983 unless the defendant was "acting under color of law." After the color of law requirement is met, then it must be determined in which capacity the defendant is being sued.

1983 FORM Rev. 01/2008

B. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits while a prisoner: ☐ Yes ☒ No
2. If your answer is yes, how many?: N/A Describe the lawsuit in the spaces below.

3. First previous lawsuit:

- a. Plaintiff N/A
Defendants N/A
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):
N/A
- c. Claims raised: N/A
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)
N/A
- e. Approximate date of filing lawsuit N/A
- f. Approximate date of disposition N/A

4. Second previous lawsuit:

- a. Plaintiff N/A
Defendants N/A
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):
N/A
- c. Claims raised: N/A
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)
N/A
- e. Approximate date of filing lawsuit N/A
- f. Approximate date of disposition N/A

1983 FORM Rev. 01/2008

5. Third previous lawsuit:

- a. Plaintiff N/A
Defendants N/A
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county): N/A
- c. Claims raised: N/A
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)
N/A
- e. Approximate date of filing lawsuit N/A
- f. Approximate date of disposition N/A

(If you have filed more than three lawsuits, make a copy of this (blank) page and provide the necessary information.)

6. Have you filed any actions in federal court that were dismissed because they were frivolous, malicious, or failed to state a claim upon which relief could be granted? ___ Yes ☒ No.

If you have had three or more previous federal actions dismissed for any of the reasons stated above, you may not bring another civil action in forma pauperis unless you are under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

1983 FORM Rev. 01/2008

C. CAUSE OF ACTION

COUNT I

1. The following constitutional or other federal civil right has been violated by the Defendant(s):

Right to Life. "The Eight Amendment" Cruel and unusual Punishment.

Cruel and unusual Punishment

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count) ☐ Mail ☐ Access to the court ☐ Medical care

☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation

☒ Excessive force by an officer ☐ Threat to safety ☐ Other: _____

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

On 2-14-15 while in Holding Cell # 3 on suicide watch (S.W)

(A.C.O) Joey Kaneakau was posted in Hallway outside of my cell and had open my cell door to let (A.C.O) Johnathan Silva into my cell.

(A.C.O) Joey Kaneakau then locked my cell door #3 with (A.C.O) Johnathan Silva in my cell. then (A.C.O) Joey Kaneakau went back to sit in Hallway. (A.C.O) Johnathan Silva then confronted me by saying what's this I heard you said I was with your wife at the Bar (Rob's). that's when (A.C.O) Johnathan Silva Kicked my lower Back that caused me to hit my forehead on the Brick wall while I was lying on the floor! then (A.C.O) Joey Kaneakau opened door to let (A.C.O) Johnathan Silva out.

4. **Injury:** (State how you have been injured by Defendant(s)' actions or inactions.)

(A.C.O) Johnathan Silva Kicked my Lower Back when I was lying on Bed on Floor with my Backed faced him. and the Force of the Kick caused my forehead to ram into wall where I got a cut on my forehead.

1983 FORM Rev. 01/2008

COUNT II

1. The following constitutional or other federal civil right has been violated by the Defendant(s):
the Fourteenth Amendment rights due Process and equal protection.
Due Process and equal protection

2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)

<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion
<input type="checkbox"/> Excessive force by an officer	<input checked="" type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count II, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

(A.C.O) Joey Kaneakau did Put my Safety in Jeopardy BY
Opening my Cell #3 door to Let (A.C.O) Johnathan Silva into
my Cell that caused my Safety to Be taken away while
I was on (Suicide watch) S.W. Known as Safety Watch. when
I was Assaulted. while (A.C.O) Joey Kaneakau was Sitting
in hallway on the outside OF my Holding Cell #3
(A.C.O) Joey Kaneakau Did nothing to make sure my
Safety was not Abused. nothing was Done to
Stop or prevent the Assault.

4. **Injury:** (State how you have been injured by Defendant(s)' actions or inactions.)

I WAS Kicked in Lower Back BY (A.C.O) Johnathan Silva when
(A.C.O) Joey Kaneakau opened Cell Door to Let (A.C.O)
Johnathan Silva into my Cell.

1983 FORM Rev. 01/2008

COUNT III

1. The following constitutional or other federal civil right has been violated by the Defendant(s):
The First Amendment Freedom of Speech

Freedom of Speech

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count) ☐ Mail ☐ Access to the court ☐ Medical care

☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☒ Retaliation

☐ Excessive force by an officer ☐ Threat to safety ☐ Other: _____

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count III, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

Defendants in this Area Retaliated against me

Because of what was said about (A.C.O) Johnathan Silva

Being with my wife at Bar and that was lead to

me getting kicked in lower back that forced me

head to hit brick wall.

4. **Injury:** (State how you have been injured by Defendant(s)' actions or inactions.)

I Suffered Flin a cut on my forehead when I was kicked

in Back while lying on Floor by (A.C.O) Johnathan Silva while

(A.C.O) Joer Kamekan sat outside of cell and did nothing to stop it!

(If you assert more than three Counts, make a copy of this (blank) page and provide the necessary information.)

1983 FORM Rev. 01/2008

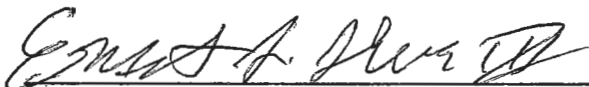
D. REQUEST FOR RELIEF

State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

Judgment in my favor in monetary Damages for Punitive Damages-mental and emotional Damages-Physical Damages and also for cruel and unusual punishment and for pain and Suffering in the Amount of \$300,000 no less than \$250,000 the Bottom Amount will Be no less than \$150,000. also Both collection officers violated of Duty's at Kani Community Corrections Center.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Signed this 29th day of April, 15.
(month) (year)


(Signature of Plaintiff)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than **fifteen (15) additional pages**. Number these pages in relation to the final page number of the section that is being extended (i.e. additional defendants' pages should be numbered "2A, 2B, etc.," additional previous lawsuits' pages "4A, 4B, etc.," additional claims should be numbered "7A, 7B, etc." This form, however, must be completely filled in to the extent applicable.